Supreme Court, U.S.
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No. 92-6281

In The Supreme Court of the United States

October Term, 1993

Robert P. Hagen,

Petitioner,

v.

State of Utah,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Utah

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BRIEF FOR FREMONT COUNTY, WYOMING AND LAKE COUNTY, MONTANA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT STATE OF UTAH

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INTERESTS OF *AMICI* COUNTIES

Fremont County, Wyoming, and Lake County, Montana have joined to file this brief. The interests of these counties and their residents are similar, and identical to those of Duchesne County, Utah, in which Petitioner Hagen and Mr. Perank [1] committed their crimes. The Counties urge this Court to affirm the decision of the Utah Supreme Court.

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[1] It is the decision in the companion *Perank*'s case which provides the analysis for *Hagen*. Mr. Perank, however, did not petition this Court for certiorari.

Abstract jurisdictional questions decided in courts, and lines on maps showing county and reservation boundaries become concrete realities when county governments provide to their residents services such as police, and zoning (and collect taxes to pay for those services). (*See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) and *Brendale v. Confederated Tribes and Bands of the Yakima Reservation*, 492 U.S. 408 (1989).

To Mr. Perank's victim(s), it is exceedingly important whether county sheriffs or city police will respond to their calls. To the counties, it is important that they can do so, as well as providing other services.

Both *Amici* counties have within their borders lands which were at one time within the exterior boundaries of reservations set aside for the sole use of Indian tribe(s). In both cases, those reservations were later disestablished or diminished by Act of Congress, in the same fashion as was the case here. Substantial populations of non-Indians settled, and established local governments, including these counties. While Indians participate in these political processes and share in the benefits, non-Indians are barred from participating in tribal government. (More correctly, non-*members* are barred.) *See Duro v. Reina*, 495 U.S. 676 (1990) at 688 and 695.

Both the Flathead and the Wind River Acts were enacted by Congress at roughly the same time historically, as the Acts considered herein and the first Act considered in *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977), which this Court determined to accomplish disestablishment. (The Flathead Act was enacted the same day as the Rosebud Act. The Wind River disestablishment was negotiated by the same Inspector McLaughlin as Rosebud, for the same purposes. *See* Appendices A and C.) The three acts are reprinted as Appendices to this brief for ease of comparison.

The Wind River Reservation is located in lands within the State of Wyoming, some of which are now within

the boundaries of *Amicus* Fremont County. Like most counties, Fremont is the local government exercising jurisdiction over such important matters as law enforcement, health and land use planning and environmental regulation. In 1905, Congress passed the Wind River Cession Act of 1905 (Act of March 3, 1905, 33 Stat. 1016, Appendix C) to disestablish a portion of that reservation which had been in this same geographical area. After the President opened these lands, most of these areas were never subsequently considered to be part of the reservation (with the exception of lands held in trust by the United States).

This explicitly "Cession" Act has also been considered by Wyoming Courts on several occasions. Like the Utah Supreme Court, the Wyoming Supreme Court held the Acts to extinguish the affected portions of that reservation:

> . . . [T]he lands between Owl Creek and Wind River to the south were ceded and relinquished to the United States, and became a part of the public domain of the United States until granted out and conveyed by the United States to the settlers thereon, and were open to settlement under the Homestead Laws . . . no Indian Reservation exists so far as the lands of the plaintiffs are concerned . . . .

Merrill v. Bishop, 237 P.2d 186, 187, 193 (Wy. 1951).

This analysis was repeated in a later case:

> [The United States] made an agreement with the Shoshone and Arapahoe tribes of Indians belonging to the Shoshone or Wind River Reservation in the State of Wyoming in which it was provided: "Article I. The said Indians . . . for the consideration hereafter named do hereby cede, grant, and relinquish to the United States, all right, title, and interest which they may have to all the lands embraced within the said reservation, except the lands within and bounded by the following described lines . . ." The land actually ceded is the land now shown to be part of Fremont County but not within the reservation.

Blackburn v. State, 357 P.2d 171 (Wyo. 1960). *See also, State v. Moss*, 471 P.2d 333 (Wyo. 1970).

The Flathead Reservation was established in what is now Montana in 1855 by the Treaty of Hell Gate, 12 Stat. 975. By Act of April 23, 1904, 33 Stat. 302, some lands of the reservation were allotted to individual Indians, and the unallotted lands opened to public settlement and entry.[2] The one million remaining for non-Indian entry and settlement were opened on May 2, 1910, pursuant to the Presidential Proclamation of May 22, 1909. About half the original acreage is now held in trust for tribes and Indians, and the remainder held in fee, primarily by non-Indians (more than two-thirds the area population is non-Indian).

Notwithstanding the history of the Flathead Reservation, and Congress' intent to disestablish, the Ninth Circuit Court of Appeals held in *Confederated Salish and Kootenai Tribes v. Namen*, 665 F.2d 951 (9th Cir. 1982), that the reservation remained in its original boundaries.

Amici are concerned that the analytical changes urged upon the Court by the United States and Petitioner and accepted by the Tenth Circuit could call into question prior law and the long-standing understandings of Fremont County residents, a vast majority of whom are non-Indian, or if Indian, not members of the Wind River Reservation tribes.

Such problems have already occurred with respect to the Flathead reservation due to a Ninth Circuit Court of Appeals decision which (like the Tenth Circuit Court of Appeals decision discussed in this case) incorrectly applies this Court's analysis of reservation diminishment.

[2] Later acts also set aside acreage for power and reservoir sites, a Bison Range, and granted lands to Montana for school purposes (Act of April 23, 1904, 33 Stat. at 303; Act of May 23, 1908, 35 Stat. 251, 267; Act of March 3, 1909, 35 Stat. 1039, 1051.

SUMMARY OF ARGUMENT

The criteria for determination of when a reservation has been extinguished or diminished are set forth in this Court's decisions, especially *Rosebud, supra*, and *DeCoteau v. District County Court*, 420 U.S. 425 (1975). States, counties, tribes and inhabitants of affected (or potentially-affected) lands have relied upon the historical understanding reflected in that analysis in making decisions where to make their homes and conduct their business. The decision of the Utah Supreme Court applies the correct standards to determine the intent of Congress and should be affirmed.

ARGUMENT

From the passage of the General Allotment Act into the Early 20th Century, Congress utilized a format approach to diminishing (or extinguishing) reservations in the West, several of which were considered by this Court in *Rosebud, supra*, and *DeCoteau, supra*. The Act herein, like the Acts affecting *Amici*, were the same as those Acts, and intended to accomplish the same result. This intent of Congress should not be frustrated by the courts.

Language of cession and restoring to the public domain terminology were both utilized by Congress to effect disestablishment, to remove the lands from the reservation. When bolstered by corroborating history of Congress' intent, that result must be confirmed.

The Rosebud Sioux Cession Act considered by this Court in *Rosebud* was so similar to the Wind River Cession Act that the Arapaho Tribe of the Wind River Reservation filed a brief and the Shosone Tribe joined in an *amici* brief in that case.[3] In the latter *amici* brief, the Wind River Cession Act of 1905 was specifically brought to the attention of this Court referring to the several acts

[3] The Acts are appended.

which had opened reservations to public settlement, noting:

> [Many Acts were] . . . patterned upon the General Allotment Act but applying to particular Indian reservations. The three Rosebud acts at issue herein are among the latter as are the statutes involving each of the four amici tribes.

Brief of *Amici Curiae* National Congress of American Indians at 4, 12, *Rosebud*.

The Court held, of course, that the portion of the reservation in question had been disestablished. By implication, the tribal arguments involving the Wyoming Wind River Act were also rejected. The analysis set forth by this Court surely dictates that result. Language of cession was intended to, and does accomplish, extinguishment of (portions of) a reservation. The combination of allotment of some lands to Indians, and the opening of the remainder to settlement and entry also should work disestablishment of the affected portion, where the circumstances confirm that was the intent of Congress.

This Court should confirm the analysis provided in the above-cited cases, because of the substantial reliance of the citizens and affected governmental bodies. It is worth noting, that the analysis itself is, in part, intended to take into account those expectations, as expressed in Congress by the representatives from these areas and subsequently confirmed by governmental treatment of the lands in question, and their occupants (especially by the United States). For years, Counties such as *Amicus* Fremont have provided law enforcement and other services (and funded these services). Until the decisions of the Ninth Circuit Court culminating in *Namen, supra, amicus* Lake County did the same.[4]

[4] Montana has "Public Law 280 Jurisdiction" (Act of August 15, 1953, 67 Stat. 590). Some problems have been ameliorated by this fact, and cooperative efforts with the tribes.

The United States, on the other hand, has not historically provided such services but, rather, has treated the areas as outside the reservation.

For example, Congress referred to the ceded area as the "former" Shoshone or Wind River Reservation, and referred to the remainder as the "diminished" Reservation. Act of April 4, 1910, 36 Stat. 267, 288. "Former Shoshone or Wind River Indian Reservation," 46 Cong. Rec. 3005, 3698 (1910) and "former Shoshone or Wind River Indian Reservation" and "lands referred to were ceded," S. Rep. No. 357, 61st Cong., 2d Sess. 45 (1910). Congress selected for the new diminished reservation boundary natural geographic features, including waterways, which had previously divided the reservation. H.R. Rep. No. 2355, 58th Cong., 2d Sess. (1904).

Such references continue through history, in the case of the Wind River Cession [5], as they do in the case here. This Court has held that cession terminology is "precisely suited" to disestablishment, (*DeCoteau v. District County Court*, 420 U.S. 425 at 445 (1975), and that when reservation lands were restored to the "public domain," this unequivocally removed them from the reservation. Even Justice Marshall in *Solem v. Bartlett*, 465 U.S. 463 (1984), continued to recognize the importance of cession. *Solem* at 470-471. He also adhered to his *Rosebud* dissent in recognizing "public domain" as express language

[5] In providing lease authority, Congress referred to "within the ceded portion of the . . . reservation." Act of August 21, 1916, 39 Stat. 519 following a Report referring to "the former limits of the reservation (S. Rep. No. 712, 64th Cong., 1st Sess. 1916 and debate including "this is not land on an Indian Reservation." 53 Cong. Rec. 121159 (1916). Still a later, reference to "the diminished and ceded portions," Act of July 27, 1939, 53 Stat. 1128, 1129 and the Act of August 15, 1953, 67 Stat. 592 providing for "damages arising out of the cession to the United States pursuant to the Act of March 3, 1905 (33 Stat. 1016) of that part of the former Wind River Indian Reservation . . . ." 67 Stat. at 592 and same references in supporting Reports H. Rep. No. 269, and S. Rep. No. 644, 83d Cong., 1st Sess. (1953).

of disestablishment, *Solem* at 470-471; *Rosebud* at 618, n.3.

Changing this analysis is not only unfair to those who relied historically upon Congress' understanding and intent, but would have severe detrimental effects, as illustrated by the nearly daily occurrences which give rise to the two cases below. Routine law enforcement by local officials whose actions serve to protect all citizens of the affected area suffers. It is not surprising that the petitioner, criminal defendant below, wishes his conviction overturned. It is surprising, and disappointing that the United States supports that result, and in a fashion that would complicate or make more difficult law enforcement in many areas around the country. There is little to assure local citizens that the United States will assume the resultant law enforcement burden.[6] If this issue is not settled, there is reason to anticipate additional, protracted litigation from areas around the West in which the non-reservation status of the lands was once deemed finally determined by Congress.

CONCLUSION

It is apparent there is a need for this Court to exercise its supervisory role over the Court of Appeals to keep them from "remak(ing) history" (*DeCoteau*, 420 U.S. at 440) in order to resurrect extinguished portions of reservations in disregard of the decisions of this Court which properly implement the intent of Congress.

There is surely no reason for this Court to depart from the settled rules for determination of extinguishment and diminishment of reservations, as set forth in *DeCoteau*, and *Rosebud*. The citizens have relied upon it,

[6] *See Duro v. Reina, supra,* in which the United States failed to prosecute a murder in a case of questionable jurisdiction for others, but clear jurisdiction for the United States. "For felonies, such as the murder alleged in this case at the outset, federal jurisdiction is in place . . ." *Duro* at 695.

and law enforcement often depends on it. The judgment of the Utah Supreme Court should be affirmed.

DATED this 17th day of August, 1993.

Respectfully submitted,

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APPENDIX

APPENDIX

The Rosebud Act of April 23, 1904

CHAP. 1484.—An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Whereas James McLaughlin, United States Indian inspector, did, on the fourteenth day of September, anno Domini nineteen hundred and one, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the fourteenth day of September, nineteen hundred and one, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one

hundred and one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand (416,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of one million and forty thousand (1,040,000) dollars.

ARTICLE III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-yearold bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children as soon as practicable after the ratification of this agreement, and that the sum of seven hundred and ninety thousand (790,000) dollars shall be paid to said Indians per capita in cash in five annual installments of one hundred and fifty-eight thousand (158,000) dollars each, the first of which cash payments shall be made within four months after the ratification of this agreement.

ARTICLE IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from one paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians

upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

ARTICLE V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

ARTICLE VI. This agreement shall take effect and be in force when signed by U. S. Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto, and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, U. S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at Rosebud Indian Agency, South Dakota, this fourteenth day of September, A. D. nineteen hundred and one.

JAMES MCLAUGHLIN,
U. S. Indian Inspector.

No.	Name	Mark	Age
1	He Dog	x	65
2	High Hawk	x	50
3	Black Bird	x	62
	(and 1,028 more Indian signatures.)		

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, South Dakota; that

it was fully understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

WILLIAM BORDEAUX, Official Interpreter.
WM. F. SCHMIDT, Special Interpreter.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

FRANK MULLEN, Agency Clerk.
C. H. BENNETT, Farmer, Cut Meat District.
JOHN SULLIVAN, Farmer, Black Pipe District.
FRANK ROBINSON, Farmer, Little White River District.
FRANK SYPAL, Farmer, Butte Creek District.
ISAAC BETTELYOUN, Farmer, Big White River District.
JAMES A. MCCORKLE, Farmer, Ponca District.
LOUIS BORDEAX, Ex-Farmer, Agency District.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359, of whome 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation, S. Dak.

CHAS. E. MCCHESNEY,
United States Indian Agent.

ROSEBUD AGENCY, S. DAK., October 4, 1901.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended and modified; as follows:

"ARTICLE I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundured and sixteen thousand acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

"ART. II. In consideration of the land ceded, relinquished, and conveyed by article one of this agreement, the United States stipulates and agrees to dispose of the same to settlers under the provisions of the homestead and town-site laws, except sections sixteen and thirty-six, or an equivalent of two sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees

to pay for sections sixteen and thirty-six, or an equivalent of two sections in each township, two dollars and fifty cents per acre.

"ART. III. It is agreed that of the amount to be derived from the sale of said lands to be paid to said Indians, as stipulated in article two of this agreement, the sum of two hundred and fifty thousand dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children, but not more than one half of the money received in any one year shall be expended as aforesaid, and the other half shall be paid to said Indians per capita in cash, and an accounting, settlement, and payment shall be made in the month of October in each year until the lands are fully paid for and the funds distributed in accordance with this agreement: *Provided, however,* That not more than five hundred thousand dollars shall be expended or paid within two years after the ratification of this agreement, and not to exceed one hundred and fifty thousand dollars in each of the following years until the expiration of five years.

"ART. IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

"ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement."

SEC. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided,* That the rights of honorably discharged Union soldiers and sailors of the late Civil and Spanish War or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged: *And provided further,* That the price of said lands entered as homesteads under the provisions of this act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, four dollars per acre, to be paid as follows: One dollar per acre when entry is made; seventy-five cents per acre within two years after entry; seventy-five cents per acre within three years after entry; seventy-five cents per acre within four years after entry, and seventy-five cents per acre

within six months after the expiration of five years after entry. And upon all land entered or filed upon after the expiration of three months and within six months after the same shall be opened for settlement and entry, three dollars per acre, to be paid as follows: One dollar per acre when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and fifty cents per acre within six months after the expiration of five years after entry. After the expiration of six months after the same shall be opened for settlement and entry the price shall be two dollars and fifty cents per acre, to be paid as follows: Seventy-five cents when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and twenty-five cents per acre within six months after the expiration of five years after entry: *Provided*, That in case any entryman fails to make such payment or any of them within the time stated all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation and the same shall be cancelled: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is one dollar and twenty-five cents per acre: *And provided further*, That all lands herein ceded and opened to settlement under this act, remaining undisposed of at the expiration of four years from the taking effect of this act, shall be sold and disposed of for cash, under rules and regulations to be prescribed by the

Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.[1]

SEC. 3. That the proceeds received from the sale of said lands in conformity with this act shall be paid into the Treasury of the United States, and paid to the Rosebud Indians or expended on their account only as provided in article three of said agreement as herein amended.

SEC. 4. That sections sixteen and thirty-six of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said country of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 5. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of seventy-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section four of this act.

SEC. 6. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to

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[1] 38 L. D., 213.

dispose of said land except as provided herein; or to guarantee to find purchasers for said lands, or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale therof only as received, as herein provided.

Approved, April 23, 1904.

The Flathead Act of April 23, 1904

CHAP. 1495.—An act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, directed to immediately cause to be surveyed all of the Flathead Indian Reservation, situated within the State of Montana, the same being particularly described and set forth in article two of a certain treaty entered into by and between Isaac H. Stevens, governor and headmen, and delegates of the confederated tribes of the superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the chiefs, Flathead, Kootenai, and Upper Pend d'Oreille Indians, on the sixteenth day of July, eighteen hundred and fifty-five.

SEC. 2. That so soon as all of the lands embraced within said Flathead Indian Reservation shall have been surveyed, the Commissioner of Indian Affairs shall cause allotments of the same to be made to all persons having tribal rights with said confederated tribes of Flatheads, Kootenais, Upper Pend d'Oreille, and such other Indians and persons holding tribal relations as may rightfully belong on said Flathead Indian Reservation, including the Lower Pend d'Oreille or Kalispel Indians now on the reservation, under the provisions of the allotment laws of the United States.

SEC. 3. That upon the final completion of said allotments to said Indians, the President of the United States shall appoint a commission consisting of five persons to inspect, appraise, and value all of the said lands that shall not have been allotted in severalty to said Indians, the said persons so constituting said commission to be as follows: Two of said commissioners so named by the

President shall be two persons now holding tribal relations with said Indians—the same may be designated to the President by the chiefs and headmen of said confederated tribes of Indians, two of said commissioners shall be resident citizens of the State of Montana, and one of said commissioners shall be a United States special Indian agent inspector of the Interior Department.

SEC. 4. That within thirty days after their appointment said commission shall meet at some point within the boundaries of siad Flathead Indian Reservation and organize by the election of one of their number as chairman. Said commission is hereby empowered to select a clerk at a salary not to exceed seven dollars per day.

SEC. 5. That said commissioners shall then proceed to personally inspect and classify and appraise, by the smallest legal subdivisions of forty acres each, all of the remaining lands embraced within said reservation. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, timber lands, the same to be lands more valuable for their timber than for any other purpose; fourth, mineral lands; and fifth, grazing lands.

SEC. 6. That said commission shall in their report of lands of the third class determine as nearly as possible the amount of standing saw timber on legal subdivisions thereof and fix a minimum price for the value thereof, and in determining the amount of merchantable timber growing thereon they shall be empowered to employ a timber cruiser, at a salarly of not more than eight dollars per day while so actually employed, with such assistants as may be necessary, at a salary not to exceed six dollars per day while so actually employed. Mineral lands shall not be appraised as to value.

SEC. 7. That said commissioners, excepting said special agent and inspector of the Interior Department, shall

be paid a salary of not to exceed ten dollars per day each while employed in the inspection and classification of said lands; such inspection and classification to be fully completed within one year from date of the organization of said commission.

SEC. 8. That when said commission shall have completed the classification and appraisement of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the general provisions of the homestead, mineral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands, and excepting sections sixteen and thirty-six of each township, which are hereby granted to the State of Montana for school purposes. And in case either of said sections or parts thereof is lost to the said State of Montana by reason of allotments thereof to any Indian or Indians now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract under consideration, to locate other lands not occupied, not exceeding two sections in any one township, and such selections shall be made prior to the opening of such lands to settlement: *Provided*, That the United States shall pay to said Indians for the lands in said sections sixteen and thirty-six, or the lands selected in lieu thereof, the sum of one dollar and twenty-five cents per acre.

SEC. 9. That said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late Civil and Spanish Wars, as defined and described in sections twenty-three hundred

and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged: *Provided further,* That the price of said lands shall be the appraised value thereof, as fixed by the said commission, but settlers under the homestead law who shall reside upon and culticate the land entered in good faith for the period required by existing law shall pay one-third of the appraised value in cash at the time of entry, and the remainder in five equal annual installments to be paid one, two, three, four, and five years, respectively, from and after the date of entry, and shall be entitled to a patent for the lands so entered upon the payment to the local land officers of said five annual payments, and in addition thereto the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre, and no other and further charge of any kind whatsover shall be required of such settler to entitle him to a patent for the land covered by his entry: *Provided,* That if any entryman fails to make such payments, or any of them, within the time stated, all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and canceled: *And provided,* That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed by said commission, receiving credit for payments previously made.[1]

SEC. 10. That only mineral entry may be made on such of said lands as said commission shall designate and classify as mineral under the general provisions of the mining laws of the United States, and mineral entry may also be made on any of said lands whether designated by

[1] 41 L. D.,521.

said commission as mineral lands or otherwise, such classification by said commission being only prima facie evidence of the mineral or nonmineral character of the same: *Provided,* That no such mineral locations shall be permitted upon any lands allotted in severalty to an Indian.

SEC. 11. That all said lands returned and classified by said commission as timber lands shall be sold and disposed of by the Secretary of the Interior under sealed bids to the highest bidder for cash or at public auction, as the Secretary of the Interior may determine, under such rules and regulations as he may prescribe.

SEC. 12.[2] That the President may reserve and except from said lands not to exceed nine hundred and sixty acres for Catholic mission schools, church, and hospital and such other eleemosynary institutions as may now be maintained by the Catholic Church on said reservation, which lands are hereby granted to those religious organizations of the Catholic Church now occupying the same, known as the Society of Jesus, the Sisters of Charity of Providence, and the Ursuline Nuns, the said lands to be granted in the following amounts, namely, to the Society of Jesus, six hundred and forty acres, to the Sisters of Charity of Providence, one hundred and sixty acres, and to the Ursuline Nuns, one hundred and sixty acres, such lands to be reserved and granted for the uses indicated only so long as the same are maintained and occupied by said organizations for the purposes indicated. The President is also authorized to reserve lands upon the same conditiions and for similar purposes for any other missionary or religious societies that may make application therefor within one year after the passage of this act, in such quantity as he may deem proper. The President may also reserve such of said lands as may be convenient or necessary for the occupation and maintenance of any and all agency buildings, substations,

[2] A substitute for sec. 12 was enacted in sec. 9 of the act of 1905, ch. 1479, 33 Stat., 1080, post, p. 157.

mills, and other governmental institutions now in use on said reservation or which may be used or occupied by the Government of the United States.

SEC. 13. That all of said lands classified as agricultural lands of the first class and agricultural lands of the second class and grazing lands that shall be opened to settlement under this act remaining undisposed of at the expiration of five years from the taking effect of this act shall be sold and disposed of to the highest bidder for cash, under rules and regulations to be prescribed by the Secretary of the Interior, at not less than their appraised value, and in tracts not to exceed six hundred and forty acres to any one person.

SEC. 14. That the proceeds received from the sale of said lands in conformity with this act shall be paid into the Treasury of the United States, and after deducting the expenses of the commission, of classification and sale of lands, and such other incidental expenses as shall have been necessarily incurred, and expenses of the survey of the lands, shall be expended or paid, as follows: One-half shall be expended from time to time by the Secretary of the Interior as he may deem advisable for the benefit of the said Indians and such persons having tribal rights on the reservation, including the Lower Pend d'Oreille or Kalispel thereon at the time that this act shall take effect, in the construction of irrigation ditches, the purchase of stock cattle, farming implements, or other necessary articles to aid the Indians in farming and stock raising, and in the education and civilization of said Indians, and the remaining half to be paid to the said Indians and such persons having tribal rights on the reservation, including the Lower Pend d'Oreille or Kalispel thereon at the date of the proclamation provided for in section nine hereof, or expended on their account, as they may elect.

SEC. 15. That there is hereby appropriated out of the Treasury not otherwise appropriated, the sum of one

hundred thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of Montana and for lands reserved for agency, school, and mission purposes, as provided in sections eight and twelve of this act, at the rate of one dollar and twenty-five cents per acre; also the sum of seventy-five thousand dollars, or so much thereof as may be necessary, the same to be reimbursable out of the funds arising from the sale of said lands to enable the Secretary of the Interior to survey the lands of said reservation as provided in section one of this act.

SEC. 16. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent, in each township, and the reserved tracts mentioned in section twelve, or to dispose of said land except as provided herein, or guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received.

Approved, April 23, 1904.

The Shoshone or Wind River Act of March 3, 1905

CHAP. 1452.—An act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation in the State of Wyoming and to make appropriations for carrying the same into effect.

Whereas James McLaughlin, United States Indian inspector, did on the twenty-first day of April, nineteen hundred and four, make and conclude an agreement with the Shoshone and Arapahoe Tribes of Indians belonging on the Shoshone or Wind River Reservation in the State of Wyoming, which said agreements is in words and figures as follows:

This agreement made and tneered into on the twenty-first day of April, nineteen hundred and four, by and between James McLaughlin, United States Indian inspector, on the part of the Unted States, and the Shoshone and Arapahoe Tribes of Indians belonging on the Shoshone or Wind River Indian Reservation, in the State of Wyoming, witnesseth: [1]

ARTICLE I. The said Indians belonging on the Shoshone or Wind River Reservation, Wyoming, for the consideration hereinafter named, do hereby cede, grant, and relinquish to the United States, all right, title, and interest which they may have to all the lands embraced within the said reservation, except the lands within and bounded by the following described lines: Beginning in the midchannel of the Big Wind River at a point where said stream crosses the western boundary of the said reservation; thenc in a southeasterly direction following the midchannel of the Big Wind River to its conjunction with the Little Wind or Big Popo-Agie River, near the northeast corner of township one south, range four east; thence up the midchannel of the said Big Popo-Agie

[1] Wadsworth v. Boysen, 148 Fed., 771.

River in a southwesterly direction to the mouth of the North Fork of the said Big Popo-Agie River; thence up th emidchannel of said North Fork of the Big Popo-Agie River to its intersection with the southern boundary of the said reservation, near the southwest corner of section twenty-one township two south, range one west; thence due west along the said southern boundary of the said reservation to the southwest corner of the same; thence north along the western boundary of said reservation to the place of beginning: *Provided*: That any individual Indian, a member of the Shoshone or Arapahoe Tribes, who has, under existing laws or treaty stipulations, selected a tract of land within the portion of said reservation hereby ceded, shall be entitled to have the same allotted and confirmed to him or her, and any Indian who has made or received an allotment of land within the ceded territory shall have the right to surrender such allotment and select other lands within the diminished reserve in lieu thereof at any time befoer the lands hereby ceded shall be open for entry.

ARTICLE II. In consideration of the lands ceded, granted, relinquished, and conveyed by Article I of this agreement, the United States stipulates and agrees to dispose of the same as hereinafter provided under the provisions of the homestead, town-site, coal, and mineral land laws, or by sale for cash as hereinafter provided at the following prices per acre: All lands entered under the homestead law within two years after the same shall be opened for entry shall be paid for at the rate of one dollar and fifty cents per acre; after the expiration of this period, two years, all lands entered under the homestead law, within three years therefrom, shall be paid for at the rate of one dollar and twenty-five cents per acre; that all homestead entrymen who shall make entry of the lands herein ceded, within two years after the opening of the same to entry, shall pay one dollar and fifty cents per acre for the land embraced in their entry, and for all of the said lands thereafter entered

under the homestead law, the sum of one dollar and twenty-five cents per acre shall be paid; payment in all cases to be made as follows: Fifty cents per acre at the time of making entry and twenty-five cents per acre each year thereafter until the price per acre hereinbefore provided shall have been fully paid; that lands entered under the town-site, coal, and mineral land laws shall be paid for in an amount and manner as provided by said laws; and in case any entrymen fails to make the payments herein provided for or any of them, within the time stated, all rights of the said entryman to the lands covered by his or her entry shall at once cease and any payments therebefore made shall be forfeited, and the entry shall be forfeited and canceled, unless the Secretary of the Interior shall in his discretion, and for good cause, excuse for not exceeding six months, the said failure, application for which must be made by the settler on or before the date of the payment which would bring him or her in default, and all lands except mineral and coal lands herein ceded, remaining undisposed of at the expiration of five years from the opening of said lands to entry, shall be sold to the highest bidder for cash at not less than one dollar per acre under rules and regulations to be prescribed by the Secretary of the Interior: *Provided,* That any lands remaining unsold eight years after the said lands shall have been opened to entry may be sold to the highest bidder for cash without regard to the above minimum limit of price; that lands disposed of under the town-site, coal, and mineral land laws shall be paid for at the prices provided for by law, and the United States agrees to pay the said Indians the proceeds derived from the sails of said lands, and also to pay the said Indians the sum of one dollar and twenty-five cents per acre for sections sixteen and thirty-six, or an equivalent of two sections in each township of the ceded lands, the amounts so realized to be paid to and expended for said Indians in the manner hereinafter provided.[1]

[1] 25 Opp. Atty. Gen. 524.

ARTICLE III. It is further agreed that of the amount to be derived from the sale of said lands, as stipulated in Article II of this agreement, the sum of eighty-five thousand dollars shall be devoted to making a per capita payment to the said Indians of fifty dollars each in cash within sixty days after the opening of the ceded lands to settlement, or as soon thereafter as such sum shall be available, which per capita payment shall be from the proceeds of the sale of sections sixteen and thirty-six or an equivalent of two sections in each township within the ceded territory, and which sections are to be paid for by the United States at the rate of one dollar and twenty-five cents per acre: *And provided further,* That upon the completion of the said fifty dollars per capita payment, any balance remaining in the said fund of eighty-five thousand dollars, shall at once become available and shall be devoted to surveying, platting, making maps, payment of the fees, and the performance of such acts as are required by the statutes of the State of Wyoming in securing water rights from said State for irrigation of such lands shall remain the property of said Indians, whether located within the territory intended to be ceded by this agreement or within the diminished reserve.

ARTICLE IV. It is further agreed that of the moneys derived from the sale of said lands the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, shall be expended under the direction of the Secretary of the Interior for the construction and extension of an irrigation system within the diminished reservation for the irrigation of the lands of said Indians: *Provided,* That in the employment of persons for the construction, enlargement, repair and management of such irrigation system, members of the said Shoshone and Arapahoe Tribes shall be employed wherever practicable.

ARTICLE. V. It is agreed that at least fifty thousand dollars of the moneys derived from the sale of the ceded lands shall be expended, under the direction of the Sec-

retary of the Interior, in the purchase of live stock for issue to said Indians, to be distributed as equally as possible among the men, women, and children of the Shoshone or Wind River Reservation.

ARTICLE. VI. It is further agreed that the sum of fifty thousand dollars of the moneys derived from the sales of said ceded lands shall be set aside as a school fund, the principal and interest on which at four per centum per annum shall be expanded under the direction of the Secretary of the Interior for the erection of school buildings and maintenance of schools on the diminished reservation, which schools shall be under the supervision and control of the Secretary of the Interior.

ARTICLE VII. It is further agreed that all the moneys received in payment for the lands hereby ceded and relinquished, not set aside as required for the various specific purposes and uses herein provided for, shall constitute a general welfare and improvement funds, the interest on which at four per centum per annum shall be annually expended under the direction of the Secretary of the Interior for the benefit of the said Indians; the same to be expended for such purposes and in the purchase of such articles as the Indians in council may decide upon and the Secretary of the Interior approve: *Provided, however,* that a reasonable amount of the principal of said fund may also be expended each year for the erection, repair, and maintenance of bridges needed on the reservation, in the subsistence of indigent and infirm persons belonging on the reservation, or for such other purposes for the comfort, benefit, improvement, or education of said Indians as the Indians in council may direct and the Secretary of the Interior approve. And it is further agreed that an accounting shall be made to said Indians in the month of July in each years until the lands are fully paid for, and the funds hereinbefore referred to shall, for the period of ten years after the opening of the lands herein ceded to settlement, be used in the manner and for the

purposes herein provided, and the future disposition of the balance of said funds remaining on hand shall then be the subject of further agreement between the United States and the said Indians.

ARTICLE VIII. It is further agreed that the proceeds derived from the sales of said lands in conformity with the provisions of this agreement, shall be paid into the Treasury of the United States and paid to the Indians belonging on the Shoshone or Wind River Reservation, or expended on their account only as provided in this agreement.

ARTICLE IX. It is understood that nothing in this agreement shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township or to dispose of said land except as provided herein, or to guarantee to find purchasers for said land or any portion thereof, it being the understanding that the United States shall act as trustee for said Indians to dispose of said lands and to expend for said Indians and pay over to them the proceeds received from the sale thereof only as received, as herein provided.

ARTICLE X. It is further understood that nothing in this agreement shall be construed to deprive the said Indians of the Shoshone or Wind River Reservation, Wyoming, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

ARTICLE XI. This agreement shall take effect and be in force when signed by U.S. Indian Inspector James McLaughlin and by a majority of the male adult Indians parties hereto, and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, U.S. Indian Inspector, on the part of the United States, and the male adult Indians belonging on the Shoshone or Wind

River Indian Reservation, Wyoming, have hereunto set their hands and seals at the Shoshone Agency, Wyoming, this twenty-first day of April, A.D. nineteen hundred and four.

JAMES MCLAUGHLIN, [SEAL.]
U.S. Indian Inspector.

No.	Nafe	Age	Mark	Tribe
1	George Terry	48	..	Shoshone (Seal)
2	Myron Hunt	48	x	" (Seal)
	(And 280 more Indian signatures.)			

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open counsil to the Indians of the Shoshone or Wind River Reservation. Wyoming; that it was fully understood by them before signing, and that the agreement was duly executed and signed by 282 of said Indians.

CHARLES LAHOE,
Shoshone Interpreter.

MICHAEL MANSON,
Arapahoe Interpreter.

SHOSHONE AGENCY, WYOMING,
April 22, 1904.

We, the undersigned, do hereby certify that we witnessed the signature of James McLaughlin, U.S. Indian Inspector, and of the two hundred and eighty-two (282) Indians of the Shoshone or Wind River Reservation, Wyoming, to the foregoing agreement.

JOHN ROBERTS,
Missionary of the Protestant Episcopal
Church on the Reservation.

JOHN S. CHURCHWARD,
Assistant Clerk, Shoshone Agency, Wyo.

SHOSHONE AGENCY, WYOMING,
April 22nd, 1904.

I hereby certify that the total number of male adult Indians, over eighteen (18) years of age, belonging on the Shoshone or Wind River Reservation, Wyoming, is four hundred and eighty-four (484) of whom two hundred and eighty–two (282) have signed the foregoing agreement.

H. E. WADSWORTH,
U.S. Indian Agent.

SHOSHONE AGENCY, WYOMING,
April 22nd, 1904.

Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same is hereby, accepted, ratified, and confirmed, except as to Articles II, III, and IX, which are amended and modified as follows, and as amended and modified are accepted, ratified, and confirmed:

ARTICLE. II. In consideration of the lands ceded, granted, relinquished, and conveyed by Article I of this agreement, the United States stipulates and agrees to dispose of the same, as hereinafter provided, under the provisions of the homestead, town-site, coal and mineral land laws, or by the sale for cash, as hereinafter provided, at the following prices per acre: All lands entered under the homestead law within two years after the same shall be opened for entry shall be paid for at the rate of one dollar and fifty cents per acre; after the expiration of this period, two years, all lands entered under the homestead law within three years therefrom shall be paid for at the rate of one dollar and twenty-five cents per acre; that all homestead entrymen who shall make entry of the lands herein ceded within two years after the opening of the

same to entry shall pay one dollar and fifty cents per acre for the land embraced in their entry, and for all of the said lands thereafter entered under the homstead law the sum of one dollar and twenty-five cents per acre shall be paid; payment in all cases to be made as follows: Fifty cents per acre at the time of making entry and twenty-five cents per acre each year thereafter until the price per acre hereinbefore provided for shall have been fully paid; that lands entered under the town-site, coal and mineral land laws shall be paid for in an amount and manner as provided by said laws; and in case any entryman fails to make the payments herein provided for, or any of them, within the time stated, all rights of the said entryman to the lands covered by his or entry shall at once cease and any payments therebefore made shall be forfeited and the entry shall be held for cancellation and canceled, and all lands, except mineral and coal lands herein ceded, remaining undisposed of at the expiration of five years from the opening of said lands to entry shall be sold to the highest bidder for cash, at not less than one dollar per acre, under rules and regulations to be prescribed by the Secretary of the Interior: *And provided,* That nothing herein contained shall impair the rights under the lease to Asmus Boysen; but said lessee shall have for thirty days from the date of the approval of the surveys of said land a preferential right to locate, following the Government surveys, not to exceed six hundred and forty acres in the form of a square, of mineral or coal lands in said reservation; that said Boysen at the time of entry of such lands shall pay cash therefor at the rate of ten dollars per acre and surrender said lease and the same shall be canceled: *Provided further,* That any lands remaining unsold eight years after the said lands shall have been opened to enry may be sold to the highest bidder for cash without regard to the above minimum limit of price; that lands disposed of under the town-site, coal and mineral land laws shall be paid for at the prices provided by law, and the United

States agrees to pay the said Indians the proceeds derived from the sales of said lands, the amount so realized to be paid to and expended for said Indians in the manner hereinafter provided.

ARTICLE III. It is further agreed that of the amount to be derived from the sale of said lands, as stipulated in Article II of this agreement, the sum of eighty-five thousand dollars shall be devoted to making a per capital payment to the said Indians of fifty dollars each in cash within sixty days after the opening of the ceded lands to settlement, or as soon thereafter as such sum shall be available: *And, provided further,* That upon the completion of the said fifty dollars per capita payment any balance remaining in the said fund of eighty-five thousand dollars shall at once become available and shall be devoted to surveying, platting, making of maps, payment of the fees, and the performance of such acts as are required by the statutes of the State of Wyoming in securing water rights from said State for the irrigation of such lands as shall remain the property of said Indians, whether located within the territory intended to be ceded by this agreement or within the diminished reserve.

ARTICLE IX. It is understood that nothing in this agreement contained shall in any manner bind the United States to purchase any portion of the lands herein described or to dispose of said lands except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the understanding that the United States shall act as trustee for said Indians to dispose of said lands and to expend for said Indians and pay over to them the proceeds received from the sale thereof only as received, as herein provided.

SEC. 2. That the lands ceded to the United States under the said agreement shall be disposed of under the provisions of the homestead, town-site, coal and mineral land laws of the United States and shall be opened to settlement and entry by proclamation of the President of the United States on June fifteenth, nineteen hundred and

six, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter said lands except as prescribed in said proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry, and the rights of honorably discharged Union soldiers and sailors of the late civil and of the Spanish wars, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States as amended by the act of March first, nineteen hundred and one, shall not be abridged.

All homestead entrymen who shall make entry of the lands herein ceded within two years after the opening of the same to entry shall pay one dollar and fifty cents per acre for the land embraced in their entry, and for all of the said lands thereafter entered under the homestead law the sum of one dollar and twenty-five cents per acre shall be paid, payment in all cases to be made as follows: Fifty cents per acre at the time of making entry and twenty-five cents per acre each year thereafter until the price pre acre hereinbefore provided shall have been fully paid. Upon all entries the usual fees and commissions shall be paid as provided for in homestead entries on lands the price of which is one dollar and twenty-five cents per acre. Lands entered under the town-site, coal, and mineral land laws shall be paid for in amount and manner as provided by said laws. Notice of location of all mineral entires shall be filed in the local land office of the district in which the lands covered by the location are situated, and unless entry and payment shall be made within three years from the date of location all rights thereunder shall cease; and in case any entryman fails to make the payments herein provided for, or any of them, within the time stated, all rights of the said entryman to the lands covered by his or her entry shall cease, and any payments therebefore made shall be forfeited, and

the entry shall be held for cancellation and canceled; that nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one of the Revised Statutes of the United States by paying for the land entered the price fixed herein; that all lands, except mineral and coal lands, herein ceded remaining undisposed of at the expiration of five years from the opening of said lands to entry shall be sold to the highest bidder for cash at not less than one dollar per acre under rules and regulations to be prescribed by the Secretary of the Interior: *Provided,* That any lands remaining unsold eight years after the said lands shall have been opened to entry may be sold to the highest bidder for cash without regard to the above minimum limit of price.

SEC. 3. That there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of eighty-five thousand dollars to make the per capita payment provided in article three of the agreement herein ratified, the same to be reimbursed from the first money received from the sale of the lands herein ceded and relinquished. And the sum of thirty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the same to be reimbursed from the proceeds of the sale of said lands, for the survey and field and office examination of the unsurveyed portion of the ceded lands, and the survey and marking of the outboundaries of the diminished reservation, where the same is not a natural watre boundary; and the sum of twenty-five thousands dollars is hereby appropirated out of any money in the Treasury of the United States not otherwise appropriated, the same to be reimbursed from the proceeds of the sale of said lands, to be used in the construction and extension of an irrigation system on the diminished reserve, as provided in article four of the agreement.

Approved, March 3, 1905.